

Respondent argues claimant had a right spontaneous pneumothorax, or a right collapsed lung, that was related to smoking or a congenital defect and was not work related. Respondent asserts that claimant's accident was not the prevailing factor causing his collapsed lung.

The entire June 27, 2013, preliminary hearing Order states:

Dr. David Hufford relates the Claimant's lung collapse to blebs that are a congenital condition and not related to his work activities.

K.S.A[.] 44-508(f)(2) states:

*"An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic."*

The Claimant's request for payment of outstanding medical expenses is denied.

Unauthorized medical expense is ordered paid up to the statutory limit.

The issue is: did claimant sustain a personal injury by accident arising out of and in the course of his employment with respondent?

#### **FINDINGS OF FACT**

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member finds:

Claimant is a mechanic. He testified that on March 28, 2013, he was replacing a rack and pinion in a vehicle when a jam nut that was on the tie rod end had to be removed. The jam nut was extremely tight and claimant used a pry bar to attempt to break the jam nut loose. When claimant applied pressure to the pry bar he heard something pop in his chest and within 30 seconds became short of breath. Claimant's co-workers saw what happened and his boss asked if claimant needed help. An ambulance was called and claimant was taken to the emergency room at the St. Joseph Campus of Via Christi Hospital. Claimant was diagnosed with a right collapsed lung and it was reinflated. He remained at Via Christi approximately 30 hours and has had no similar medical issues since being discharged. Claimant testified that prior to the accident, he had no lung problems, but does smoke one-half pack of cigarettes daily.

The medical records of Via Christi indicated claimant had a 16-year history of smoking one pack of cigarettes a day. The Via Christi records indicated claimant had a right spontaneous pneumothorax on chest x-ray and no bony injury. Under

Assessment/Plan are the words “? Popped bleb w/ smoking.”<sup>1</sup> Via Christi’s records also indicated claimant had significant pain related to a potential rib dislocation.

At the request of respondent, claimant was seen by Dr. David Hufford. His assessment was that claimant sustained a right spontaneous pneumothorax. Dr. Hufford’s April 1, 2013, report states:

I spent a long time discussing this event. It occurred when he was applying maximal torque to the wrench with his trunk muscles tense at forced Valsalva. I suspect he has an underlying lung bleb and no CT was done while he was hospitalized. The presence of a single large bleb or several smaller ones may put him at risk for recurrence of the condition in the right setting or even without forced Valsalva. The blebs are a congenital condition and not related in any way to work activities. He may wish to discuss this with his family’s PCP and have a CT chest at some point in the future under his private insurance to investigate if this underlying condition is present for his own knowledge and potential future occurrences.<sup>2</sup>

On April 8, 2013, Dr. Hufford indicated claimant had reached maximum medical improvement and also opined there was no impairment for a pneumothorax with return to normal lung function in the *Guides*.<sup>3</sup>

At the request of his attorney, claimant was examined by Dr. Pedro A. Murati on June 12, 2013. Dr. Murati had the records of Via Christi and Dr. Hufford, including the x-rays, took a history from claimant and conducted a physical examination. Dr. Murati’s impression was that claimant sustained a right rib dislocation resulting in a right lung puncture with pneumothorax. Dr. Murati opined:

The claimant sustained an accident at work which resulted in a collapsed right lung. He is a young person. His smoking habit, although deleterious is not known as a direct cause for his current diagnoses. His hobbies are not known as a direct cause for his current diagnoses. He has no significant pre-existing injuries that would be related to his current conditions. He has significant clinical findings that have given him diagnoses consistent with his described accident at work. Therefore, it is under all reasonable medical certainty and probability that the prevailing factor in the development of his conditions is the accident at work.<sup>4</sup>

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<sup>1</sup> P.H. Trans., Cl. Ex. 4.

<sup>2</sup> *Id.*, Cl. Ex. 2.

<sup>3</sup> American Medical Ass’n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

<sup>4</sup> P.H. Trans., Cl. Ex. 3 at 3.

**PRINCIPLES OF LAW AND ANALYSIS**

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.<sup>5</sup> “‘Burden of proof’ means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party’s position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.”<sup>6</sup>

The language of the preliminary hearing Order implies that the ALJ denied claimant’s request for payment of outstanding medical expenses because his work accident was a triggering or precipitating factor that aggravated, accelerated or exacerbated a preexisting condition or rendered a preexisting condition symptomatic. Apparently, the ALJ felt claimant had preexisting blebs, a congenital condition, that caused his lung to collapse. However, this is only an educated guess by this Board Member, as the preliminary hearing Order did not specifically state why the ALJ denied claimant’s request for payment of outstanding medical expenses.

Dr. Hufford indicated claimant’s condition was not work related and an underlying lung bleb was suspected. Dr. Hufford recommended claimant undergo a CT scan to investigate if claimant had this underlying condition. Those statements do not convince this Board Member that Dr. Hufford was of the opinion that within a reasonable degree of medical probability claimant’s right lung collapse was caused by a lung bleb or smoking.

Dr. Murati’s impression was that claimant sustained a right rib dislocation resulting in a right lung puncture with pneumothorax. However, that theory was not supported by the records of Via Christi. The chest x-ray taken at Via Christi did not reflect that claimant had a dislocated rib. Nor did Via Christi’s records indicate that claimant’s lung was punctured by a dislocated rib. Even Dr. Murati recognized claimant’s smoking habit was deleterious. Moreover, Dr. Murati examined claimant two and one-half months after the accident. This Board Member finds Dr. Murati’s opinions on causation and prevailing factor are suspect.

It is claimant’s burden to prove that he sustained a personal injury by accident arising out of and in the course of his employment with respondent. One of the elements claimant must prove is that the accident was the prevailing factor causing his injury. Claimant’s testimony as to how the accident occurred was credible and he freely admitted smoking for a number of years. No medical provider testified and Drs. Hufford and Murati are not pulmonary specialists. Via Christi’s records indicated claimant sustained a right

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<sup>5</sup> K.S.A. 2012 Supp. 44-501b(c).

<sup>6</sup> K.S.A. 2012 Supp. 44-508(h).

spontaneous pneumothorax and recommended claimant cease smoking. At this juncture of the proceedings, this Board Member cannot determine if claimant's accident was the prevailing factor causing his injury and need for medical treatment, or if claimant's collapsed lung was related to his smoking habit or a preexisting congenital defect. This Board Member believes the wisest course of action is to follow Dr. Hufford's recommendation that a CT scan be performed to determine if the underlying cause of claimant's condition is a lung bleb. Therefore, this matter is remanded to the ALJ with instructions that the ALJ order claimant to undergo an independent medical evaluation with a pulmonary specialist, who shall conduct or order a CT scan of claimant's lungs as part of the IME, and then render a causation opinion.

By statute the above preliminary hearing findings are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>7</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2012 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>8</sup>

**WHEREFORE**, the undersigned Board Member vacates the June 27, 2013, preliminary hearing Order entered by ALJ Clark and remands this matter to ALJ Clark with instructions that he order claimant to undergo an independent medical evaluation with a pulmonary specialist, with a CT scan of claimant's lungs and a causation opinion as part of the IME.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 2013.

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HONORABLE THOMAS D. ARNHOLD  
BOARD MEMBER

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Honorable John D. Clark, Administrative Law Judge

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<sup>7</sup> K.S.A. 2012 Supp. 44-534a.

<sup>8</sup> K.S.A. 2012 Supp. 44-555c(k).